

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 EDGAR UMANSOR,

Case No.: 2:23-cv-00482-APG-EJY

4 Plaintiff

Order

5 v.

6 SCALLY, et al.,

7 Defendants
8

9 Plaintiff Edgar Umansor brings this civil-rights action under 42 U.S.C. § 1983 to redress
10 constitutional violations that he claims he suffered while incarcerated. ECF No. 2-1. On April 7,
11 2023, the magistrate judge ordered Umansor to file a fully complete application to proceed *in*
12 *forma pauperis* or pay the full \$402 filing fee on or before May 10, 2023. ECF No. 3. The
13 magistrate judge warned Umansor that the action could be dismissed if he failed to file a fully
14 complete application to proceed *in forma pauperis* with all three documents or pay the full \$402
15 filing fee for a civil action by that deadline. *Id.* at 2. That deadline expired and Umansor did not
16 file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee.
17 Because Umansor filed a motion asking for the court to order the Nevada Department of
18 Corrections to provide his financial documents, the court considered meaningful alternatives to
19 dismissal and issued an order denying that motion but granting Umansor one final opportunity to
20 acquire his financial certificate and inmate account statement on his own following proper prison
21 procedures. ECF Nos. 5, 8. That deadline expired and Umansor still has not filed a fully
22 complete application to proceed *in forma pauperis*, paid the full \$402 filing fee, or otherwise
23 responded.

1 **I. Discussion**

2 District courts have the inherent power to control their dockets and “[i]n the exercise of
3 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.
4 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may
5 dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See*
6 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply
7 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*
8 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
9 order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)
10 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
11 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
12 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
13 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*
14 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

15 The first two factors, the public’s interest in expeditiously resolving this litigation and the
16 court’s interest in managing its docket, weigh in favor of dismissal of Umansor’s claims. The
17 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
18 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
19 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th
20 Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is
21 greatly outweighed by the factors favoring dismissal.

22 The fifth factor requires me to consider whether less drastic alternatives can be used to
23 correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*
v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic

1 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
2 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
3 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
4 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial
5 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have
6 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before
7 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*
8 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed
9 until and unless Umansor either files a fully complete application to proceed *in forma pauperis*
10 or pays the \$402 filing fee for a civil action, the only alternative is to enter a third order setting
11 another deadline. But the reality of repeating two ignored orders is that it often only delays the
12 inevitable and squanders the court’s finite resources. The circumstances here do not indicate that
13 this case will be an exception: there is no hint that Umansor needs additional time or evidence
14 that he did not receive the court’s order. Setting a third deadline is not a meaningful alternative
15 given these circumstances. So the fifth factor favors dismissal.

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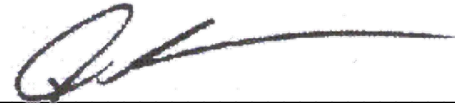
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1 **II. Conclusion**

2 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
3 dismissal. It is therefore ordered that this action is dismissed without prejudice based on
4 Umansor's failure to file a fully complete application to proceed *in forma pauperis* or pay the
5 full \$402 filing fee in compliance with the magistrate judge's April 7, 2023, and May 24, 2023,
6 orders. The Clerk of Court is directed to enter judgment accordingly and close this case. No other
7 documents may be filed in this now-closed case. If Umansor wishes to pursue his claims, he
8 must file a complaint in a new case.

9 Dated: July 17, 2023



10 U.S. District Judge
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